THE AMERICAN CLIMATE AND ENERGY SECURITY ACT

TESTIMONY OF PAUL J. HIBBARD
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before the

House Subcommittee on Energy and Environment, Committee on Energy and Commerce

Friday, June 12, 2009

Good morning, and thank you, Chairman Markey and members of the Subcommittee, for the opportunity to testify before you today. On behalf of Governor Deval Patrick and the residents and businesses of the Commonwealth of Massachusetts, I want to thank you for your leadership in addressing our energy challenges and global climate change, and for your wisdom in addressing both at the same time. The Commonwealth and the nation are fortunate to be able to tap your experience and knowledge as we work together to craft an energy and climate policy for the 21st century.

We share your view that the time has come for bold action. We must commit ourselves to unleashing the full potential of our nation to solve our energy and climate challenges while growing a new clean energy economy. Your American Climate and Energy Security (ACES) Act makes this commitment. I am here to offer our support for your efforts, and to encourage Congress to move forward with the ACES legislation expeditiously.

We appreciate greatly the leadership of Chairmen Waxman and Markey in proposing a comprehensive and forward-looking approach to addressing our energy and environmental challenges, and agree with the measured and sensible approach in the proposed legislation regarding transmission authorities – one that we believe upholds successful competition in regional energy markets, and supports the continued and proven role of regional resource planning efforts, while expanding the role of FERC in coordinating such regional planning across regions, and supporting the development of interconnection-wide joint planning review.

But I am here today to strongly caution committee members against the temptation to add to the draft legislation the more drastic step that has been proposed to expand the traditional transmission authority of FERC well beyond transmission reliability and into resource planning and development, particularly against the backdrop of the related efforts to rapidly deploy interconnection-wide

transmission "superhighways," such as that conceptualized in the Joint Coordinated System Plan (JCSP). In our view, the expansion of FERC authority into centralized resource planning and associated siting jurisdiction violates fundamental free market principles, is unwarranted from energy or environmental policy perspectives, would diminish or eliminate the proven benefits of competition in electricity markets, including the fostering of local renewable and energy efficiency resources, and would strip states and indeed whole regions of critical policy authority over energy resource planning.

At the outset, I want to recognize the appropriate level of jurisdiction that FERC does and should have over transmission in interstate commerce. The maintenance of robust transmission infrastructure is critical to supporting competitive markets and ensuring the safe and reliable operation of our interconnected transmission networks. FERC currently has, and should have, backstop authority for siting interstate transmission projects that are needed to meet federally enforceable reliability standards, or to address major existing transmission system bottlenecks. When it comes to challenges to system reliability or significant congestion on the existing transmission system, the federal government needs to step in when states do not act in a reasonable timeframe. Given the recent Fourth Circuit court decision, it would be wise for Congress to address the concerns of the court, and clarify FERC's authority in this area.

But key to FERC's authority on siting is its limitation to projects *needed to maintain bulk power system reliability*. This is fundamentally different from what is proposed in draft transmission legislation being floated in the House and Senate, which would dramatically expand FERC's siting and – more significantly – planning authority to include new transmission that is not needed for reliability, but instead is only needed to interconnect new generating resources to the transmission network. While on its face this seems like a laudable goal, especially when linked to bringing distant renewables to market, the practical impact is likely to lead to costly and inefficient results – and would be a dramatic federal intervention of central-planning into currently successful regionally-managed competitive energy markets. In short, federal decisions that dictate the generation that will be used to meet electricity demands on a national basis from among all possible sources will override the operation of competitive electricity markets, and squash state and regional efforts to promote demand response, energy efficiency and local renewable resource development.

In contrast, we believe that renewable resources steered to market need to be those that are lowest cost, as determined by testing all options within a competitive market framework, one that operates subject to legislated emission caps and renewable resource floors. I want to be clear; the Commonwealth of Massachusetts recognizes that our need to address the carbon challenge is paramount; but we will fail in this challenge if the path we choose to do so abandons the free market principles that we rely on to maintain steady downward pressure on costs and upward support for

technological innovation. FERC's reliance on competition in wholesale electricity markets as a de-facto determination that wholesale rates are just and reasonable is a lynchpin of these principles in their application to wholesale electricity markets across the country, and deviation from competition will come at a great cost to our nation's electricity consumers.

In the world of electricity, there are three pillars that we must rely on to enable us to meet our energy and environmental objectives at the lowest possible cost:

- First, we must continue the evolution of FERC's oversight of wholesale electricity rates across the country in a way that increases reliance on regional competitive market structures to capture system efficiencies and to fairly allocate risks and rewards among market participants and consumers. This includes expansion of short- and long-term markets for energy, capacity, transmission rights, and ancillary services;
- Second, we must continue to meet our emission reduction goals through cap-and-trade emission control programs that rely on allowance trading to meet established annual emission caps through market-driven mechanisms that achieve lowest costs; and
- Finally, we should meet our renewable development objectives not through central planning, but through market-based minimum portfolio standards that establish an incremental monetary value for renewable generation, though the sale of tradable renewable energy credits in regional and, hopefully, national markets.

In every instance, the guiding principle is for legislators and regulators to set the rules, and then leave it to the creativity of the marketplace to produce the most efficient – and least cost – compliance path. The Energy and Commerce Committee has done this many times and it has yielded impressive results. Indeed, this is the very framework encompassed in the Waxman-Markey legislation – we applaud you for this approach, and urge you to maintain it.

To understand my concern regarding the risk to free markets and competition in the various proposals for central transmission planning, it is instructive to consider the operation of existing wholesale markets and the potential impact of the transmission superhighway vision.

Where competitive markets operate (and here I describe markets in the Northeast, but the principles are the same in competitive markets across the country), new resource developers of all types compete in a competitive capacity, energy and reserve markets to meet existing and future demand. In New England, the market response has been overwhelming, with active and successful participation by demand response and renewable resources. Well over 10,000 megawatts of demand response and supply resources, including renewables, have responded to competitive market auctions that seek just hundreds of megawatts of new demand. All of these resources compete to meet future

demand in a manner consistent with our underlying energy and environmental objectives. Specifically, resources compete:

> (1) with full internalization of the cost of NO_x, SO_2, and CO_2 associated with national and regional cap and trade programs – *increasing* the price offered by fossil-based resources;
> (2) with full internalization of the value of renewable resources through the issuance and trading of renewable energy credits generated by state renewable portfolio standards – *decreasing* the price offered by renewable resources; and
> (3) with full internalization of all development costs, *including the cost to transmit power reliably to load*. This last point is fundamental to the efficient operation of free and competitive markets, placing all competing entities on an equal footing, and removing development risks from captive ratepayers, and placing it with the development and financial communities – precisely the entities most able to manage such risks over time.

In this way, evolution of our region's power system happens in a manner that meets our states' energy and environmental policy goals, but does so at *delivered* prices to ratepayers that are driven to their lowest possible levels by competition.

By contrast, proposed legislation to expand central planning and siting authorities would enable, and in effect require, that FERC approve, site, and allocate to ratepayers the costs and risks associated with building transmission to connect some types of generation, with insufficient consideration of what this means to the prices consumers pay at the end of the line. Combined with the interconnection-wide vision embraced by the JCSP, this approach would lead to a direct subsidy for distant resources only, on a discriminatory basis, thus eliminating the level playing field that exists in regional markets. This will needlessly increase electricity prices to consumers, and most importantly would seriously derail the development of local and regional energy efficiency, demand response and renewable resource alternatives. This would be a bad outcome for consumers, and for meeting long-term environmental objectives alike.

The impact of such a scheme would be significant, and long-lived. By way of example (again using the Northeast context here), how might it have this effect? Recall that in New England we have over 10,000 MW of demand response, renewable, and traditional resources competing in a market that has a need for only 1,000 to 2,000 MW of new resources over the next couple decades, and has less than 30,000 MW of existing demand. If FERC, with its new resource planning authority, moves quickly on a major transmission buildout as conceived in the Joint Coordinated System Plan, this would, as a result of a single, non-market planning decision, dump on the order of *several thousand* MW of resources into New England along new high-voltage lines. This would wipe out the need for new resources in our region for decades, dramatically reduce opportunities for new

local resources to compete with existing resources to meet existing demand, and by flooding the market could seriously diminish market prices for energy, capacity, and reserves (even though such price reductions would not benefit consumers, as they would be offset by transmission development costs that are embedded in pass-through transmission rates).

Over the past few years, one thing has become clear: the development of new energy efficiency, demand response, and local renewable resources in market regions relies critically on energy, capacity and reserve market revenues to attract investor interest, fund development and maintain profitability. The expansion of central resource planning and the subsidization (through allocation of transmission costs to captive ratepayers) of distant generation thereby present the very real scenario of crushing the market value of local and regional conservation and renewable resource development. This will unintentionally disfavor local renewables which are near load centers (even though their total all-in delivered cost might well be lower), because we will effectively give a free ride to the distant renewables since they will not have to bear the cost of their transmission investments in their delivered costs.

On a very practical level, while in our region we have abundant land-based renewables that stand ready to compete, it is also worth mentioning one potential casualty of the focus on Midwest resources and FERC planning authority could be the most promising advanced emerging energy technology available to our country today. The very best wind resource in our country – from the perspectives of resource size, distribution, capacity factor, reliability, proximity to population centers, and minimization of environmental impact – is located a short distance off the major load centers of the East Coast. For sure, offshore wind turbine installation may currently cost more than on-shore wind development, but better wind resource economics, decreasing unit costs with increased development opportunities, and the absence of the need for cross-country transmission could make offshore wind competitive with remote wind farms. The higher cost of construction may well be more than offset by the markedly lower cost of transmission. In short, offshore wind should and must have that opportunity to compete on a delivered energy cost basis – and not be disadvantaged by transmission subsidies for other forms of renewable power generation. Given the sheer magnitude of this resource potential so close to our nation's major load centers, and the opportunity to have it developed incrementally, disbursed geographically, and through many different interconnections along the coast (improving power system reliability), we would miss an enormous opportunity to not focus aggressively on its development, and we would be making a grave mistake to preclude its development by overwhelming local markets with a high volume of power from distant generation sources.

Recognizing the abundance of on-shore and off-shore renewable development potential in the Northeast, the New England Governors have been working cooperatively, and with ISO-New

England, to develop a New England Governors' Energy Blueprint (Blueprint). The Blueprint analyzes the development of up to 12,000 MW of on- and off-shore wind and other renewable development potential in the region, and will review (1) potential transmission pathways for such development, (2) the existing state-by-state competitive procurement and long-term contracting mechanisms that can provide the revenue certainty needed for development efforts, and (3) state and potentially joint regional procedures to facilitate the siting of associated interstate transmission lines. The Blueprint effort is a joint cooperative planning effort coordinated by the region's Governors, energy offices, and public utility commissions, and is being carried out in close cooperation with the regional system operator.

I recognize that support is building for transmission from wind projects in Texas and the Dakotas to load centers thousands of miles away. Bringing renewable energy to market from remote sources should certainly be one option for meeting our clean energy needs. But if we are to meet those needs in the most economic and responsible way, such resources must compete on a fair and equal basis with demand-side and renewable resource alternatives within each region – *based on the price of power at the point of consumption, including all transmission and other development costs*. And the path to this result starts from the bottom up – at the level of state and regional planning, policies, and markets. The role of FERC in this planning exercise should be focused on and limited to coordination and information sharing between regions, and facilitating the development of formal interregional analyses. In strongly endorsing this approach, the bill put forth by Chairmen Waxman and Markey got it exactly right.

In contrast, without recognizing these fundamental market principles, proposed legislation to expand federal siting authority is not simply about transmission siting, but something far more. It will effectively strip states and regions of their resource planning functions, eliminate them as laboratories for the development of innovative low-carbon alternatives, seriously damage the function of competition in regional electricity markets and, in so doing, drive up electricity prices unnecessarily.

Thus I urge you to focus not on an expansion of FERC's authority over resource planning, or the build out of a massive transmission system focused on one set of pre-determined renewable generation resources, but rather to retain the basic approach to federal oversight of regional planning coordination outlined in the Waxman/Markey draft legislation. We can then focus on how to direct funding and assistance in a way that brings the best and most economic and promising renewable resources to market, in the context of local resource availability and regional system planning. This will lead to the most effective use of government research and development assistance dollars, preserve the competitive market foundation for electricity resource additions, minimize the cost of

electricity to consumers, and leave in place an appropriate level of state and regional review of electricity infrastructure development.

Many of the concerns I have mentioned today are shared in a letter to Chairmen Waxman and Markey supported by a bipartisan groups of 11 Govenors representing every coastal state from Maine to Virginia (Appendix A). The Governors recognized the high value of local development of on and offshore renewable resources in the East, and urged Congress to avoid a central planning solution and instead create strong, fair and efficient markets for efficiency and renewables, consider long-term contract mechanisms to support the competitive development of renewable resources based on the delivered price of electricity, encourage regional plans to promote local renewable resources and offshore renewable development, and evaluate expansion of the federal investment tax credit. I urge you to consider the measures recommended in the Governors letter, and to refrain from a more planning-focused approach that would likely be a more costly and inefficient path to the development of renewable resources in our country.

I want to thank you again for this opportunity to comment, and would be happy to follow up with the Committee in whatever manner is most helpful.

APPENDIX A

LETTER OF THE EASTERN GOVERNORS ON RENEWABLES AND TRANSMISSION PLANNING


Massachusetts


Rhode Island


Connecticut


Delaware


Maine


Maryland


New Hampshire


New Jersey


New York


Vermont


Virginia

May 11, 2009

The Honorable Harry Reid
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable John Boehner
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Senator Reid, Senator McConnell, Speaker Pelosi, Representative Boehner,

As Governors from Northeast and Mid-Atlantic states, we applaud your support for renewable energy and its role in enhancing clean energy job creation, increasing our energy security and curbing greenhouse gas emissions.

We write to encourage you to support strong new federal policies to promote wind resources. In addition to recognizing the potential for wind resources in the Midwest, we believe that the wind resources of the Eastern seaboard states – both onshore and offshore wind – represent one of our nation's most promising yet underdeveloped source of renewable energy. At the same time, we must express our concern about the significant risks posed by recent proposals regarding transmission that we believe could jeopardize our states' efforts to develop wind resources and inject federal jurisdiction into an area traditionally handled by states and regions.

Significant onshore or offshore wind projects have been proposed or planned for almost all of the Northeast and Mid-Atlantic states. Several of our states already have significant land-based wind projects installed or well underway and have established aggressive wind development goals. Moreover, the waters adjacent to the East Coast hold potential for developing some of the most robust wind energy resources in the world – enough wind potential to meet total U.S. electricity demand, as Interior Secretary Ken Salazar has recently pointed out. Congress should put its full support behind the development of these resources.

Current legislative proposals focused on transmission, in contrast, would designate national corridors for transmission of electricity from the Midwest to the East Coast, with the costs for that transmission allocated to all customers. While we support the development of wind resources for the United States wherever they exist, this ratepayer-funded revenue guarantee for land-based wind and other generation resources in the Great Plains would have significant, negative consequences for our region: it would hinder our efforts to meet regional renewable energy goals with regional resources and would establish financial conditions in our electricity markets that would impede development of the vast wind resources onshore and just off our shores for decades to come. In addition, the legislative proposals for selective federal subsidy for certain land-based wind resources paired with the practice of dispatching the lowest cost available generation resource could result in surplus transmission capacity or artificially inflated energy prices for Midwest renewables being paid by east coast ratepayers. Such an outcome would have negative consequences for consumers, regional energy sufficiency and the environment. Moreover, it is well accepted that local generation is more responsive and effective in solving reliability issues than long distance energy inputs.

Land-based wind energy projects, which have already proven themselves economical in the Northeast, must have the chance to move forward. And while offshore wind installation costs currently exceed those of onshore installations, these resources are much closer to our load centers and research and development efforts focused on reducing costs and improving reliability promise to make offshore wind competitive with Midwest wind farms on a delivered cost of power basis. As regional onshore projects move forward and offshore wind moves into commercialization in the United States, they all must have the opportunity to compete on an even playing field with on-shore, yet remote, sources of power from the Midwest and not be disadvantaged by upfront transmission subsidies.

If transmission is to be addressed in energy legislation at all, we believe Congress should focus its attention on regional solutions. In our regions, this means continuing to pursue planned wind and other renewable resources within our competitive energy markets framework. For offshore wind, this means a new offshore wind transmission backbone to facilitate the interconnection of offshore renewable energy resources to major load centers along the East Coast. Development of this offshore network will require the attention of the Department of Energy, the Minerals Management Service (MMS) and the Federal Energy Regulatory Commission (FERC), as part of an Outer Continental Shelf energy resource development plan.

In our view, legislation to promote renewable energy resources on a fair, equitable, and efficient basis should, at a minimum:

- Create strong federal energy efficiency and renewable energy incentives that are simple, transparent and technology neutral – and capitalize on more than a decade of successful direct experience by many states in developing strong efficiency and renewable energy markets;

- Consider new market mechanisms such as regional procurements for renewable energy in the form of long-term power purchase agreements – again, allowing all renewable generation interests to compete on the basis of total cost of power delivered to load centers;

- Encourage that state and regional planners along the Atlantic coast develop a plan within and across regions to accommodate growing availability of onshore wind resources and to establish an offshore wind transmission regime, including new FERC policies tailored to the special circumstances of offshore wind and expedited siting review for offshore lines in federal waters and their interconnection to coastal load centers with appropriate state involvement.

- Encourage FERC and NERC to support and facilitate robust planning within regional transmission organizations that provides and promotes local renewable resources integration and preserves local oversight and review.

- Evaluate whether expanding the federal Investment Tax Credit would be a more effective, simpler, and technology neutral mechanism for promoting renewable energy development across the country than a focus on transmission, which tends to support remote onshore wind, but disadvantage nearby offshore wind.

Thank you for your attention to this critical issue.

Sincerely,

Governor Deval Patrick
Massachusetts

Governor Donald L. Carcieri
Rhode Island

Governor M. Jodi Rell
Connecticut

Governor Jack Markell
Delaware

Governor John Baldacci
Maine

Governor Martin O'Malley
Maryland

Governor John H. Lynch
New Hampshire

Governor Jon S. Corzine
New Jersey

Governor David A. Paterson
New York

Governor James H. Douglas
Vermont

Governor Timothy M. Kaine
Virginia

cc: Chairman Jeff Bingaman
Ranking Member Lisa Murkowski
Chairman Henry Waxman
Ranking Member Joe Barton
Secretary Steven Chu
Secretary Ken Salazar
Honorable Carol Browner